

AN ORDINANCE

00- 0 -1785

BY FINANCE/EXECUTIVE

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR CHASTAIN PARK AMPHITHEATER MANAGEMENT BETWEEN ROBERT W. WOODRUFF ARTS CENTER, INC. ON BEHALF OF THE ATLANTA SYMPHONY ORCHESTRA AND THE CITY OF ATLANTA

WHEREAS, the City owns a public entertainment facility located in Chastain Park and known as the Chastain Park Amphitheatre (hereinafter, the "Facility"); and

WHEREAS, the Chastain Park Amphitheatre is a limited use facility located in a residential neighborhood, where special conditions and restraints dictate a very specialized usage and understanding of the Facility; and

WHEREAS, the operational policies and procedures with respect to the Facility must be consistent with, and sensitive to, the special nature of the Facility; and

WHEREAS, other municipalities who support their world class orchestras and amphitheaters in residential settings can serve as good model to the City of Atlanta; and

WHEREAS, the city wishes to respond to the desires of the host neighborhood of Chastain Amphitheatre; and

WHEREAS, the relative absence of noise complaints from the concerts presented by the Atlanta Symphony Orchestra has caused the request that this party take the lead position in a renewal contract; and

WHEREAS, the City, in response to its objectives and the objectives of residents near the venue, wishes to modify the existing contract to include the maximum decibel level of 85dBc at the rear of the house; and

NOW, THEREFORE, IT IS ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the mayor be, and he hereby is authorized on behalf of the City of Atlanta to execute an Agreement with Robert W. Woodruff Arts Center, Inc., a Georgia non-profit on behalf of Atlanta Symphony Orchestra, a division thereof.

Section 2. That the term of the Agreement shall commence upon the expiration of the present lease on Deember 31, 2000, that is, on January 1, 2001, and be for a period of ten year, expiring on December 31, 2010.

Section 3. That all ordinances and resolutions in conflict herewith are hereby repealed for purposes of this ordiance only, and only to the extent of said conflict.

STATE OF GEORGIA
COUNTY OF FULTON

DRAFT FOR COUNCIL MEMBER

MULLER COUNCIL PRESIDENT PITTS October

RENEWAL OPERATING AGREEMENT FOR CHASTAIN PARK AMPHITHEATER

This ~~Renewal~~Operating Agreement, made and entered into this ____ day of _____, 2000, to be effective January 1, 2001, by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, hereinafter referred to as the "City," and ~~CHASTAIN VENTURES, hereinafter referred to as the "Venture," a Georgia joint venture consisting exclusively of~~ ROBERT W. WOODRUFF ARTS CENTER, INC., a Georgia non-profit corporation, on behalf of ATLANTA SYMPHONY ORCHESTRA, a division thereof, and ~~CONCERT / SOUTHERN CHASTAIN PROMOTIONS, a Georgia joint venture consisting of SOUTHERN PROMOTIONS, INC., and HIGH COTTON, INC., both of which are Georgia corporations, hereinafter referred to as the "Symphony",~~

WITNESSETH

WHEREAS, the City owns a certain public entertainment facility located in Atlanta, Georgia, known as Chastain Park Amphitheater, more particularly described in Exhibit "A" hereto, hereinafter referred to as the "Facility"; and,

WHEREAS, the Facility is a limited-use facility located within a public park known as Chastain Park, which is itself located in a residential community, where special conditions and restraints dictate a very specialized usage and understanding of the Facility; and,

WHEREAS, the policies and operational procedures with respect to the Facility must be consistent with and sensitive to the special nature of the Facility and to the surrounding

neighborhood;

and,

WHEREAS, it is the policy of the City to administer a program of municipal support of the arts; and,

WHEREAS, the parties hereto desire to enter into a Renewal Operating Agreement (hereinafter referred to as the "Agreement") for the operation of the Facility including, but not limited to, leasing the Facility for the presentation of performances by the Atlanta Symphony Orchestra and guest performers presented by the Atlanta Symphony Orchestra, for the use of the Facility by Concert / Southern Chastain Promotions sublessees of the Symphony as authorized by this Agreement, and other presenters and promoters to the extent authorized by this Agreement, for ticket sales for all or a portion of performances, for operation of concessions at the Facility and for the overall management of the Facility; and,

WHEREAS, the City and the Venture Chastain Ventures, a Georgia joint venture consisting exclusively of ROBERT W. WOODRUFF ARTS CENTER, INC., a Georgia non-profit corporation, on behalf of ATLANTA SYMPHONY ORCHESTRA, a division thereof, and CONCERT / SOUTHERN CHASTAIN PROMOTIONS, a Georgia joint venture consisting of SOUTHERN PROMOTIONS, INC., and HIGH COTTON, INC., both of which are Georgia corporations, have an existing Agreement for the lease and management of the Facility, which Agreement expires on December 31, 2000, and,

WHEREAS, pursuant to Paragraph 16 of said existing Agreement the parties have the option to renegotiate and renew the Agreement in good faith, and therefore now do renew and extend the Agreement upon the renegotiated terms and modifications set forth herein in this Renewal Agreement (hereinafter referred to as the "Renewal Agreement"), and, the City has

determined that it is in the best interests of the City and its citizens not to renew said 1990-2000 Agreement, but rather to enter into a new Agreement commencing January 1, 2001, leasing the Facility to a symphony orchestra in the State of Georgia of international reputation and standing; and,

WHEREAS, the City has determined that the Atlanta Symphony Orchestra is the sole orchestra in the State of Georgia with such international reputation and standing, and is therefore a sole source for such purpose; and,

WHEREAS, an Ordinance adopted by City Council on the ____ day of _____, 2000, and approved by the Mayor on the ____ day of _____, 2000, attached hereto as Exhibit "B", authorized the Mayor to enter into a contract with the VentureSymphony for the lease of the Facility;

and,

WHEREAS, this Renewal Agreement is authorized as to the Robert W. Woodruff Arts Center, Inc., by Exhibit "I"; ~~as to Concert / Southern Chastain Promotions, by Exhibit "J"; and as to the Venture by Exhibit "K";~~

THEREFORE, in consideration of the mutual promises between the parties set forth below, the City and the VentureSymphony agree as follows:

1.

LEASE

The City leases the Facility exclusively to the VentureSymphony upon the terms and conditions herein contained in this Renewal Agreement, for an ~~additional~~ term of ten (10) years, commencing on January 1, 2001, and terminating on December 31, 2010. Provisions for

extension of this additional term are contained below.

2.

DEFINITION OF SEASON;
LIMITATION ON EVENTS

The "Season" for the Facility shall be defined as commencing on the Friday before the Monday on which the Memorial Day holiday is observed, and ending on the Labor Day holiday. The "Pre-Season" shall commence on April 1 and terminate on the day preceding the commencement of the Season.

The "Post-Season" shall commence on the day after the Season terminates and shall terminate on October 31. The ~~Venture~~Symphony, shall, at its discretion, present events at the Facility subject only to the following limitations:

- (a) During the Season, the total number of events presented at the Facility in any week (Monday through Sunday) shall not exceed three (3), although there may be no more than three (3) consecutive nights of events under any circumstances. At least one Friday or Saturday night per month during the months of June, July and August shall either not be used for events or shall be used for an all-orchestral event, and two (2) additional Friday or Saturday nights during said three-month period shall not be used for events presented at the Facility of any nature. No events shall be presented on "school nights" as determined by the Atlanta public school system, unless such event ends no later than 7:00 p.m. A "school night" is defined as a night on which the following calendar day is a school attendance day for students.
- (b) During the Pre-Season and Post-Season, there shall be permitted two (2) events

per week, which shall take place on a Friday or a Saturday night, or on a Sunday afternoon but terminating no later than seven o'clock (7:00) p.m.; provided, however, that during the month of April there shall be permitted only one (1) such event per week. During each of the months of May, September and October, at least two (2) weekend nights (Friday and/or Saturday) shall not be used for events. During the month of October there shall be no more than four (4) events in total.

- (c) The City shall have the right to exempt from those nights otherwise available for presentations hereunder, a maximum of five (5) nights, which shall thereupon not be available for events pursuant to this Renewal Agreement. Said exemption shall not be effective unless the City shall have delivered written notice thereof to the VentureSymphony no less than one hundred and eighty (180) days prior to the dates in question. The exempted dates shall be used exclusively for City-sponsored cultural events, or for such City-sponsored events the net proceeds of which shall be turned over to a non-profit entity endorsed by the City. The City shall be treated as a sublessee of the VentureSymphony with regard to said dates, except that the City shall pay no rent for said dates.
- (d) The total number of events presented at the Facility during a calendar year shall not exceed fifty-five (55). Of this number, events presented by the VentureSymphony or its sublessees (other than the City) shall not exceed fifty (50). ~~Under the Agreement in effect 1990-2000, the total number of events permitted per year was seventy (70), of which sixty-five (65) were allotted to the Venture. The reduction of such permitted events by fifteen (15) in this Renewal Agreement shall be accounted for entirely by reducing the~~

~~number of events permitted to Concert / Southern Chastain Promotions by this number~~
~~(15).~~

~~(e) — The Venture~~

(e) The Symphony shall publish and cause to be posted in a prominent location at the box office at the Facility, which shall be the glass case for posting in said box office, a list of those dates upon which events will be presented according to the following schedule:

i ASO "All Orchestral" nights established and notification served by April 1st of each year.

ii Other events:

April 1 notification for all events booked for the year as of said date, and not less than four (4) weeks notice for any performance added to said schedule. If an event previously scheduled is subject to a subsequent date change, not less than two (2) weeks notice of said change will be provided, and said notice shall further be given within twenty-four (24) hours of the date the VentureSymphony, or either of its partners, becomes aware of said change.

In addition to posting the notice as described above, the VentureSymphony at the same time will cause any such notice to be mailed to the City and sent by facsimile transmission to the President of the Chastain Park Civic Association.

(f) The maximum occupancy of the Facility at any time is 6,464 ticketed persons, subject to approval by the Fire Marshal as to seating plans. The

VentureSymphony shall submit to the City's Fire Marshal for approval two (2)

separate seating plans, which when approved by the Fire Marshal shall govern the seating at events in the Facility. The first seating plan shall govern those concerts done by the Atlanta Symphony Orchestra. The second seating plan shall govern those concerts done by Concert / Southern Chastain Promotions, and its sublessees. As the result of such approvals, the maximum occupancy allowed may be less than 6,464, but in no event shall occupancy be greater than 6,464.

- (g) In the event that the VentureSymphony or either partner in the VentureSymphony or any sublessee of the VentureSymphony violates the provisions of subparagraphs (a), (b), (d) or (f) of this paragraph 2, the offending party shall pay a fine according to the following schedule:

Ten Thousand Dollars (\$10,000) for the first violation of each of said subparagraphs by said party during a calendar year;

Twenty Thousand Dollars (\$20,000) for the second such violation during a calendar year; and

Thirty Thousand Dollars (\$30,000) for the third and any such subsequent violations during said calendar year.

Such fines shall be paid by the VentureSymphony within seven (7) days of notification of such violation by the City. Any such amounts shall be held by the City in a dedicated fund and expended solely for repairs and improvements to Chastain Park, as determined by the City based upon recommendations made in writing by the Chastain Park Civic Association. Should a promoter or sublessee of the City violate any of said provisions on the dates reserved to the City pursuant to subparagraph (c) above, the promoter or sublessee shall be subject to

the same fines.

- (a) In the event that the VentureSymphony commits more than three (3) violations of the provisions of this Paragraph 2 during any one calendar year, such shall be an event of default by the VentureSymphony. Upon the occurrence of such event of default the City shall have the right immediately to terminate this Renewal Agreement without liability, anything in Paragraphs 16 or 17 herein to the contrary notwithstanding.

3.

RENTAL FEE

- (a) The VentureSymphony shall pay to the city as rent for the ten-year term of this Renewal Agreement, the following sums for each year of said term, payable by November 15 in each such year:

Years	Annual Rent
2001-2005	\$300,000
2006-2010	\$350,000

- (b) In addition to the amounts denominated as rent in subparagraph (a) above, the VentureSymphony shall pay to the City rent calculated as an amount equal to Two Dollars (\$2.00) multiplied by the number of seats sold to events (including any seats sold to City-sponsored events) presented during each such calendar year of the renewal term (2001-2010). Said payment shall be made no later than November 15 following each said Season, and shall be accompanied by a certified statement reflecting the numbers of tickets sold, and VentureSymphony shall maintain for a period of three (3) years from said date a certified box office

statement and ticket manifest for each said performance for audit by the City.

The City shall hold all amounts received by it pursuant to this paragraph 3 (b) and to paragraphs 2(g), 7(d), and 19 hereof in an interest bearing account, the principal and interest of which may be used only for repairs and improvements to Chastain Park, in accordance with the provisions of Paragraph 2(g) above.

The City shall, within ten (10) days of the submission to it of the information specified above at the end of each year's concert season, provide to the Chastain Park Civic Association a comprehensive accounting of the funds paid by the VentureSymphony pursuant to this Renewal Agreement, together with a copy of the certified statement from the VentureSymphony reflecting the number of tickets sold, certified box office statement and ticket manifest.

4.

RESPONSIBILITY FOR PHYSICAL FACILITY

- (a) The VentureSymphony agrees to manage and operate the Facility in a manner consistent with the management principles of professional entertainment facilities and in accordance with existing and future City and State of Georgia policies, procedures, laws and ordinances, especially as to any city noise ordinances which may be passed in the future. The VentureSymphony will be responsible for repairs to, and for repair and maintenance of, the Facility resulting from normal wear and tear. Such repairs would include repairs or replacement of fences, gates, vegetation (other than trees), cleaning and painting of the Facility, repair of plumbing fixtures (but not plumbing referred to in subparagraph (b) (3) below), and similar repairs occasioned by the normal use or normal aging of the Facility.

(b) The City will be responsible for and will bear the expense of structural repairs to, and repair and maintenance of, the Facility and its major supply or support systems (except to the extent that such repairs or maintenance are occasioned by the willful act or negligence of or incorrect construction by or on behalf of, the ~~VentureSymphony~~) including but not limited to the following: Major structural elements of the Facility, including but not limited to all foundations, exterior walls, retaining walls, masonry walls and other stonework, poured concrete steps, walkways and ceiling/overhangs, back stage slabs and asphalt driveways and pit seating area.

- i. That portion of the electrical supply system commencing at the Georgia Power Company power meters located to the left of Building "A", and terminating the power distribution panels located in Buildings "C" and "D", as said buildings are identified on Exhibit A attached hereto.
- ii. That portion of the plumbing system commencing at the water supply line cutoff valve located in the ground at entrance gate #1 "Pool Road" running underground, up through and terminating at the pressure regulator valves located below Building "F" and in the basement of Building "A"; and from the water supply cutoff valve located approximately at the intersection of Powers Ferry Road and Stella Drive, running underground terminating at the exterior walls of Buildings "H" and "I" and terminating at the water supply cutoff valve located in the ground adjacent to Building "G".

- iii. All underground drainage and sewage pipes beneath the floors and outside the exterior walls of Buildings "A", "F", "G", "H" and "I".
- iv. Stage right garage roof and fascia, shell ceiling roof, and back stage dressing room building roof.
- v. Trees, including the removal, replacement, pruning or trimming thereof where appropriate in the City's discretion.

In addition, the City will maintain in good working condition: Pool Road, Park Road, all parking areas within the boundaries of Chastain Park, including paving, lighting, drainage, signage and all other repairs and maintenance necessary for the unimpeded use of the Facility.

(c) In the event that the City is required to make repairs or provide replacements pursuant to this paragraph 4 and has failed to do so:

i between March 20 and October 31, within ten (10) days after written notice of then need therefor to the person designated in paragraph 23 below, (or in the event said repairs cannot, for reasons beyond the City's control, be completed within said ten (10) day period, if the City has failed to commence said repairs and diligently pursue them to completion) or

ii between November 1 and March 19, within a reasonable time after written notice to the person designated in paragraph 23 below, so as to ensure completion by the succeeding April 1,

the ~~Venture~~Symphony shall be authorized to make said repairs at its own expense in lieu of the City and to deduct the cost thereof (as certified in writing by the ~~Venture~~Symphony to the City) from any amounts due to the City pursuant to

Paragraph 3(a) hereof, and to the extent that such deductions are insufficient for the cost thereof, the City shall reimburse the VentureSymphony therefor from the amounts due the City pursuant to Paragraph 3(b) above.

(d) In the event that the repairs referred to in paragraph 4(b) above constitute an emergency, as defined in this subparagraph (d), the notice referred to in paragraph 4(c) above shall be modified to require telephonic notice to the person designated in paragraph 23. If immediate repairs can be made by the City, said repairs shall be made; if telephonic contact cannot be made, or if immediate repairs cannot be, or are not, made, the VentureSymphony shall have the rights described in paragraph 4(c) above. Written notice of any such event and the repairs undertaken as a consequence shall be provided to the City within a reasonable time. For purposes of this subparagraph, an emergency shall be deemed to exist if there is reasonable cause to believe that the VentureSymphony or its sublessees will suffer a loss of income or be exposed to costs or liability as a result of an event or condition requiring said repairs, resulting, for example, from restriction of access to the Facility, cancellation of a scheduled performance or rehearsal or endangerment of persons or property, which cannot be avoided except by immediate attention or repair. However, in no event shall the City be liable to the VentureSymphony or its sublessees for any loss of income, costs, or other liabilities associated with an event or events or other use of the Facility should the Facility or any portion thereof be destroyed by fire or other casualty or which results or may result by any event or condition requiring repair of the Facility which is the responsibility of the City.

(e) The VentureSymphony shall be responsible for removal of all trash and litter from the Facility and the immediately surrounding area, including parking lots and street

parking areas on Powers Ferry Road, Park Drive, Pool Road, Dupre Road and Wieuca Road within twelve (12) hours of the conclusion of each event presented at the Facility.

- (f) The ~~Venture~~Symphony shall permit explosive fireworks to be detonated only under competent supervision and as part of a performance at the Facility and on no more than one (1) occasion each year, which shall be the Independence Day holiday concert.
- (g) The ~~Venture~~Symphony shall not permit on-site promotions or commercial displays inside or outside the Facility.
- (h) Proper lighting shall be installed at the locations specified in subparagraph (e) above by the City after a review of the area by the parties.
- (i) The ~~Venture~~Symphony shall provide a shuttle transport system which shall minimize the number of vehicles parking in, and traveling through, Chastain Park as a result of events at the Facility. The ~~Venture~~Symphony shall promptly promote the use of such shuttle system in all advertisements and promotional materials used in connection with marketing events to the public.

5.

MANAGEMENT AND OPERATIONS

The ~~Venture~~Symphony shall manage and operate the Facility for the purpose of subleasing the Facility to entities which will present cultural and/or popular programs of entertainment, and which may arrange for sponsorship for said performances for their own accounts. The Atlanta Symphony Orchestra and Concert/Southern Promotions shall be the primary entitiest~~y~~ to whom the Facility shall be subleased~~leased~~. The ~~Venture~~Symphony shall evaluate all relevant factors, including the City's valid minority business goals, the ~~Venture's~~Symphony's prior experience with, and the fiscal responsibility and references of,

prospective sublessees in determining, in the sole discretion of the VentureSymphony, the other entities to whom the Facility may be subleased.

The VentureSymphony shall have the sole and exclusive authority to manage and operate the Facility during the term of this Renewal Agreement, although the City shall employ on-site event management to oversee the Facility during each event. The VentureSymphony shall have the responsibility and the authority to hire and fire its personnel for said purposes, and to contract with other entities to provide services either necessary or desirable therefor, including the provision of financial, custodial, security, parking supervision, maintenance, repair, technical support and other services. The VentureSymphony shall be responsible for obtaining and maintaining all operating supplies, including tables and chairs for the Facility.

The VentureSymphony will engage a sufficient number of traffic police to control the flow of traffic at all major intersections in and around Chastain Park beginning one and one-half (1½) hours before any scheduled starting time for a performance and continuing until the commencement thereof, and beginning again at the conclusion of each performance and continuing for on (1) hour thereafter.

6.

MINORITY /FEMALE BUSINESS ENTERPRISE GOALS

In order to meet Minority/Female Business Enterprise Goals under this Renewal Agreement the ~~Venture shall renew the sublease of thirty-five (35%) percent of its available event dates (that is, 35% of those events allocated to the Venture under this Renewal Agreement, not including those of the Atlanta Symphony Orchestra) to "Jerry Dickerson Presents,"~~ theSymphony shall sublet eighteen (18) of the fifty (50) events allotted to it to a qualified minority promoter or promoter, which promoter(s) shall be approved first by the Office of

Contract Compliance, in accordance with the standards and provisions set forth in Appendix "A" attached.

7.

SOUND OPERATING PRINCIPLES

- (a) The City has installed a digital delay speaker system, with "fill" speakers, which is in place and utilized as the "house" delay system for the Facility, and which minimize noise impact on the neighborhood while directing enhanced sound energy to the intended audience. Also, the City shall install a remote digital volume control, which shall govern the "fill" speakers and main speakers to provide better policing of noise levels. The ~~Venture~~Symphony shall require ~~each~~its own performances and those of its partners and all sublessees and other performers to use said "house" delay system with "fill" speakers for sound augmentation and speaker system positions as the exclusive such system in all performances at the Facility. The parties will review the existing delay system and will continue to investigate and to cooperate in the implementation of practical systems and methods available to minimize or eliminate noise impact on the neighborhood.
- (b) The maximum number of hours during which performance level sound, including sound checks, rehearsals, live or recorded performances, and dinner music, may be emitted from the Facility shall be four (4) hours per day. Such performance level sound may not be permitted at the facility before the hour of two o'clock (2:00) p.m. on any given day. No performance shall continue past the hour of eleven o'clock (11:00) p.m.

party shall be obligated to pay a fine according to the following schedule:

For the first performance sponsored by said party in which a violation in a particular category identified in (i) or (ii) above occurs, \$10,000;

For the second such performance in which a violation in the same category occurs, \$20,000;

For the third and any subsequent such performance in which a violation in the same category occurs, \$30,000 as to each such performance.

All fines shall be paid by the VentureSymphony within seven (7) days of notification by the City of a violation under this Paragraph 7(d). In the event that the VentureSymphony commits more than three (3) violations of the provisions of this Paragraph 7(d) during any one calendar year, such shall be a default by the VentureSymphony. Upon the occurrence of such event of default under this Paragraph 7(d) the City shall have the right immediately to terminate this Renewal Agreement without liability, anything in Paragraphs 16 or 17 herein to the contrary notwithstanding

In the event that the VentureSymphony disputes the imposition of any such fine or action undertaken by the City under this Paragraph 7(d), the VentureSymphony shall (i) notify the City in writing clearly setting forth the grounds therefor that the fine or action is disputed; (ii) shall timely pay the fine (if any) and/or undertake any action required hereunder, as the case may be; and (iii) seek resolution of the dispute by filing an appeal pursuant to the rules set forth by the American

Arbitration Association. The VentureSymphony shall be solely responsible for all costs and expenses associated with said appeal.

8.

MAJOR PHYSICAL CHANGES

During the term of this Renewal Agreement, neither the City nor the VentureSymphony shall make architectural changes to the Facility which would substantially increase the audience seating capacity, nor shall the City make changes which would adversely affect ingress or egress to the Facility. The VentureSymphony may make structural changes to the Facility only upon the prior written consent of the City and to the extent that such changes are consistent with the existing architectural integrity of the Facility.

9.

UTILITIES

VentureSymphony will be responsible during the term of this Renewal Agreement, for all charges for electricity and water and other utilities provided exclusively to the Facility.

10.

INSURANCE; DAMAGE OR DESTRUCTION OF FACILITY

- (a) The VentureSymphony agrees to obtain and maintain for the term of this Renewal Agreement, insurance of the types and in the amounts indicated on Exhibit "C" hereto, which insurance shall conform with the additional requirements contained in said Exhibit "C". Said insurance shall cover the Facility and any expanded boundaries thereof which are subsequently agreed to by City and VentureSymphony in writing.

- (b) For all improvements made to the Facility by contractors engaged by the VentureSymphony, either said contractor or the VentureSymphony shall furnish a payment bond and a performance bond to the City in conformance with applicable State law and as set forth in Exhibit "C" hereto. The person executing the bonds on behalf of the surety shall file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of said surety.
- (c) In the event that any portion of the Facility shall be damaged or destroyed by fire or other casualty, VentureSymphony shall forthwith give notice thereof to City, and City shall at its sole cost and expense promptly commence and diligently prosecute to completion the repair, restoration, rebuilding, reconstruction or replacement of the damage or destroyed portion of the Facility, such that the condition of the Facility as so repaired, restored, rebuilt, reconstructed or replaced shall be as nearly as possible the condition of the Facility as it existed prior to such damage or destruction. All such repair, restoration, rebuilding, reconstruction or replacement shall be carried out in a first class workmanlike manner, subject to the prior written approval of VentureSymphony, which approval shall not be unreasonably withheld. City's obligation described above in this subparagraph (c), with respect to the first One Hundred Thousand Dollars (\$100,000) expense thereof, is conditioned upon payment by VentureSymphony of the amount required to maintain the insurance described in paragraph H of Exhibit "C" hereto. In the event that the Facility is completely destroyed by fire or other casualty, the City may but shall not be obligated to replace or reconstruct

the Facility, and in the event that it does not do so, this Renewal Agreement shall be terminated as of the date of said destruction, and the ~~Venture's~~Symphony's obligation to make payments to the City pursuant to paragraph 3 or 19 hereof shall also cease as of said date. In the event that the City obtains insurance for the purpose of meeting its obligations pursuant hereto, said insurance shall contain a waiver of subrogation in favor of the ~~Venture~~Symphony.

- (d) ~~Venture's~~Symphony's duty and obligation to pay the rent provided for the paragraph 3 of this Renewal Agreement shall abate by reason of any damage or destruction not resulting from the fault of the ~~Venture~~Symphony, its sublessors or contractors which prevents or impedes ~~Venture~~Symphony or its sublessees from conducting events presented at the Facility until City has completed the necessary repairs and Facility is again suitable for such events presented at the Facility.

11.

HOLD HARMLESS

In addition to maintaining the insurance required by Exhibit "C", the ~~Venture~~Symphony agrees to hold the City, its officers, agents and employees harmless from any and all claims against the City or any of them arising out of any act or omission of the ~~Venture~~Symphony, its officers, agents or employees which act or omission was not specified or contemplated by this Renewal Agreement. The ~~Venture~~Symphony further agrees that its agreement to hold the City, its officers, agents or employees or subcontractors of any tier harmless shall not be limited to the limits of the liability insurance required by Exhibit "C".

12.

RIGHTS OF INSPECTION

The VentureSymphony agrees that it shall, at all times, grant to persons designated in writing by the City the right of access to the Facility at any time for the purposes of inspection thereof, determining compliance with the terms of this Renewal Agreement, or maintenance as required by paragraph 4 hereof.

13.

HANDICAPPED ACCESS

The provision for handicapped access specified in Exhibit "D" hereto shall be adhered to by the VentureSymphony during the term of this Renewal Agreement.

14.

COMPLIANCE WITH LAWS

As a contractor with the City of Atlanta, the VentureSymphony hereby agrees with the City of Atlanta that the VentureSymphony shall be bound by the valid laws of the United States, the State of Georgia, and all valid ordinances, regulations, policies and laws of the City of Atlanta, Georgia, including without limitation those having reference to prohibitions against discrimination on the basis of race, religion, color, sex, sexual orientation, sexual transgendered status, or national origin.

Furthermore, all subcontractors, minority and otherwise, shall be required to comply with the Finley Ordinance, as codified in Article L of the Atlanta City Code, attached hereto as Exhibit "E".

15.

NO AGENT OR BROKER

The VentureSymphony warrants that it has not employed or retained any company or person, other than a bona fide employee working for the VentureSymphony, to solicit or secure

this Renewal Agreement, that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the ~~VentureSymphony~~, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Renewal Agreement. For a breach or violation of the above warranty, and upon finding after notice and hearing, the City shall have the right immediately to terminate the Renewal Agreement without liability and at its discretion to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

16.

EXTENSION OF INITIAL TERM; TERMINATION

- (a) The term of this Renewal Agreement expires on December 31, 2010. There shall be no automatic right to a renewal or extension of this Renewal Agreement.
- (b) In addition to the events of default described in this Renewal Agreement, this Renewal Agreement may be terminated for cause by the City upon written notice to the ~~VentureSymphony~~.
- (c) In the event that this Renewal Agreement is terminated by the City for failure to pay rent when due or for other violations of this Renewal Agreement, the ~~VentureSymphony~~ shall continue to be obligated to pay the rent set forth in Paragraph 3(a) for the then current lease year on a prorated basis for the calendar year through the date the ~~VentureSymphony~~ relinquishes possession to the City pursuant to said termination, that is, for the calendar year in which termination occurs, the ~~VentureSymphony~~ shall be obligated to pay the same proportion of the specified rent under 3(a) above for that calendar year as the time of the

~~Venture's~~Symphony's occupancy in said calendar year bears to the entire calendar year. In such event, the ~~Venture~~Symphony shall also be obligated to pay the entirety of the amounts specified in Paragraph 3(b) above for tickets sold to events held in such calendar year.

- (d) In the event that the ~~Venture~~Symphony wishes to withdraw from this Renewal Agreement, it may terminate the Renewal Agreement only upon giving the City 365-days notice in advance of such termination.

17.

DEFAULT; NOTICE; CURE

- (a) The following events shall constitute events of default by either party (the "Defaulting Party") under this Renewal Agreement: (i) if the Defaulting Party shall fail to make any payment required to be made by such party hereunder within ten (10) days after the due date of such payment; (ii) if the Defaulting Party shall violate or breach, or shall fail to fully and completely observe, keep, satisfy, perform and comply with any agreement, term, covenant, condition, requirement, restriction or provision of this Renewal Agreement (other than the payment of money), and shall not cure such failure within (30) days after the other party (the "Non-Defaulting Party") gives the Defaulting Party written notice thereof in accordance with paragraph 23 hereof, or, if such failure shall be incapable of cure within thirty (30) days, if the Defaulting Party shall not commence to cure such failure within such thirty (30) day period and continuously prosecute the performance of the same to completion with due diligence; or (iii) if the Defaulting Party shall become or be declared or

adjudicated bankrupt or insolvent or be unable to pay its debts as they mature.

- (b) Upon the occurrence of any event of default, the Non Defaulting Party may pursue any one or more of the following remedies, separately or concurrently or in any combination, without any notice (except as specifically otherwise provided herein) or demand whatsoever and without prejudice to any other remedy which it may have for any amounts payable by the Defaulting Party: (i) terminate this Renewal Agreement by giving the Defaulting Party written notice of termination; and (ii) the Non-Defaulting Party may take such actions as may be necessary or appropriate to perform the obligations which the Defaulting Party is required to but has failed to perform under the terms of this Renewal Agreement, in which event the Defaulting Party shall reimburse the Non-Defaulting Party on demand for any expenses, including, without limitation, reasonable attorneys' fees, which the Non-Defaulting Party may incur in thus effecting satisfaction and performance of or compliance with the Defaulting Party's duties and obligations under this Renewal Agreement.
- (c) Non-Defaulting Party's pursuit of any one or more of the remedies stated in subparagraph (b) above shall not preclude pursuit of any other remedy or remedies provided in this Renewal Agreement or any other remedy or remedies provided for or allowed by law or in equity, separately or concurrently or in any combination. The Non-Defaulting Party's pursuit of any one or more of the remedies provided in this Renewal Agreement shall not constitute an election of remedies, excluding the election of another remedy or remedies, or a forfeiture or waiver of any amount payable under this Renewal Agreement or of any other

damages or other sums accruing by Defaulting Party by reason of Defaulting Party's failure to fully and completely keep, observe, perform, satisfy and comply with all of the agreements, terms, covenants, conditions, requirements, provisions and restrictions of this Renewal Agreement.

- (d) To ensure compliance with the provisions of this Renewal Agreement, the VentureSymphony shall post a bond in favor of the City in advance of each yearly concert season in the amount of One Million Dollars (\$1,000,000).
- (e) In the event that the VentureSymphony should fail timely to post the bond to insure compliance as provided by Paragraph 17(d) above, or in the event that the VenturesSymphonys commits three uncured material breaches of this Renewal Agreement in a single calendar year, such shall be an event of default. Upon the occurrence of such event of default the City shall have the right immediately to terminate this Renewal Agreement without liability, notwithstanding any other provisions in this Paragraph in subparagraphs (a), (b), or (c), above.
- (f) Upon the termination of this Renewal Agreement by either party, the VentureSymphony and any sublessees shall immediately relinquish possession of the Facility to the City, and upon the Venture'sSymphony's failure to relinquish possession it shall become a tenant holding over. The City may then make demand for possession and if such is refused, the City may institute dispossessory proceedings in a court of appropriate jurisdiction, in which event the VentureSymphony shall continue to be liable for rent for such period of time as it continues to hold possession as a tenant holding over. All rents past due shall be paid to the City or into the registry of the court, and the rent for the then current

year shall become immediately due and payable, anything in Paragraph 3 above to the contrary notwithstanding. During the pendency of such dispossessory proceedings the VentureSymphony shall continue to pay into the registry of the court any rents accruing after the institution of such _____ proceeding on the first day of each month on a prorated basis for the calendar year.

18.

COMMITMENT TO CAPITAL IMPROVEMENTS

The parties have agreed to an initial, prioritized list of improvements to be made to the Facility, at Venture'sSymphony's expense (not to exceed Two Million Dollars (\$2,000,000)), which improvements shall be completed no later than the end of the fifth (5th) year of the term of this Renewal Agreement. Amendments to this list, attached hereto as Appendix B, may be agreed to in writing by the VentureSymphony and a representative of the City's Department of Parks, Recreation and Cultural Affairs. Title to said improvements shall vest immediately in the City and shall not be subject to any ad valorem taxes. (In order to maintain a consistency of numbering with exhibits to the 1990 Agreement, there shall be no Exhibits "F" or "G" to this Renewal Agreement.)

19.

PARKING

The City shall permit the VentureSymphony or its agent to manage those City-owned parking lots identified on Exhibit "H" hereto on an exclusive basis on each performance date

(commencing three [3] hours prior to the scheduled performance and ending at midnight on said day) for the term of this Renewal Agreement; provided, that in the parking lot nearest the Chastain Horse Stables clubhouse there shall be at all times a minimum of seventy (70) parking spaces reserved to the operators of the Stables for the benefit of patrons of the Stables. The VentureSymphony shall pay to the City an amount equal to one-third (33a%) of the gross receipts (net of any applicable sales, use or similar taxes) documented in writing certified by the VentureSymphony or its designee from parking on said parking lots. Said amounts shall be paid no later than November 15 of each year. The VentureSymphony shall employ parking systems which are of the same quality as those employed during 1990.

The VentureSymphony may charge no more than Six Dollars (\$6.00) per event for parking; provided, however, that commencing in 2004, and in each third year of the term of this Renewal Agreement thereafter, the VentureSymphony may request the City Department of Parks, Recreation and Cultural Affairs to approve an increase in said rates, and any such approved increase shall be effective without requiring an amendment to this Renewal Agreement or the approval of any other body.

20.

ASSIGNMENT

The VentureSymphony shall have the authority to transfer or assign any of its interest or responsibility under this Renewal Agreement with the prior written consent of the City, which consent shall be authorized by resolution or ordinance of the City Council. The VentureSymphony shall not voluntarily, involuntarily, or by operation of law, sell, assign, encumber, pledge or otherwise transfer all or any part of its interest in, or rights with respect to, the Facility and/or this Renewal Agreement, without first obtaining in each such instance the

City's prior written consent. Any such assignment or transfer without the City's prior written consent shall be void and shall, at the City's option, constitute a material breach of this Renewal Agreement. No acceptance by the City of any rent or other sum of money from any assignee or other category of transferee shall release the VentureSymphony from any of its obligations hereunder or be deemed to constitute the City's consent to any assignment or transfer, and, in any event, the VentureSymphony shall remain primarily liable on this Renewal Agreement for the entire lease term hereof, and shall in no way be released from the full and complete performance of all the terms, conditions, covenants and agreements contained herein.

21.

AUDIT

City, at no expense to VentureSymphony, shall have the right to inspect and audit at any time during business hours, upon reasonable advance notice and for the applicable retention period required by governmental authorities (including the requirements of the Internal Revenue Service) having jurisdiction over the VentureSymphony or City, all of Venture'sSymphony's income, costs, expenses, correspondence and records as well as vouchers and books of account insofar as they pertain to the performance of Venture'sSymphony's services under this Renewal Agreement.

22.

EXECUTION

It is understood and agreed by the VentureSymphony that this Renewal Agreement shall not become binding on the City, and the City shall incur no liability upon same, until this Renewal Agreement has been executed by the Mayor and delivered to the VentureSymphony.

23.

NOTICE

All notices required pursuant to the provisions of this Renewal Agreement shall be deemed to have been given as of the date on which deposited in the United States mail with proper postage affixed, certified with return receipt requested, to the parties at the following addresses, with copies of all notices to the Chastain Park Civic Association (or to such other persons or such other addresses as notice shall have been given in accordance herewith):

If to the City:

Commissioner
Department of Parks, Recreation and Cultural Affairs
City of Atlanta
Eighth Floor, City Hall East
675 Ponce de Leon Avenue, N.E.
Atlanta, Georgia 30308

Telephonic notices shall be given to the Director of Bureau of Cultural

Affairs

at (404) 817-6815.

If to the ~~Venture~~Symphony:

~~Chastain Ventures~~Robert W. Woodruff Arts Center, Inc
c/o Atlanta Symphony Orchestra
1293 Peachtree Street, N.E.
Atlanta, Georgia 30309

Telephonic notices shall be given to ~~Chastain Ventures~~Robert W.

Woodruff Arts Center, Inc at (404) 733-4900.

If to the Chastain Park Civic Association:

Chastain Park Civic Association
P.O. Box 420473
Atlanta, Georgia 30342

AND

Chastain Park Civic Association
C/o Bradley Satterfield, President
104 Putnam Circle
Atlanta, Georgia 30342

Notice may also be provided by facsimile transmission (telecopy), confirmed by telecopy receipt, at the following telecopy numbers (or such other number as notice shall have been given in accordance herewith):

If to the City:

(404) XXX-XXXX

If to the ~~Venture~~Symphony:

(404) XXX-XXXX

If to the Chastain Park Civic Association:

(404) 233-8206

In the event of a change of address, telephone, or facsimile number of any person or entity entitled to notice hereunder, such person or entity shall give prompt written notice thereof in accordance with the foregoing. Thereafter, all notices given under this Renewal Agreement shall be made in conformity with such change of address, telephone or facsimile number.

24.

ENTIRE AGREEMENT

This Renewal Agreement constitutes the entire agreement of the parties, and it supersedes

all previous agreements between the parties as of the effective date of January 1, 2001, at which time all obligations under the former Agreement of December 21, 1990, and any other agreements between the parties shall expire.

25.

APPLICABLE LAW

The law of the State of Georgia shall govern the interpretation, validity, performance and enforcement of this Renewal Agreement.

26.

TIME

Time is of the essence to this Renewal Agreement.

IN WITNESS WHEREOF, the City and the ~~Venture~~Symphony have caused this Renewal Agreement to be executed by the duly authorized officials, the day and year first above written.

(Signatures on following page)

ATTEST:

CITY OF ATLANTA

Municipal Clerk

Mayor (SEAL)

ATTEST:

VENTURES _____ (Signatures continued on following page)

CHASTAIN

ATTEST:

ROBERT W. WOODRUFF ARTS CENTER,
INC.

by: _____

Secretary,
Robert W. Woodruff Arts Center, Inc.

President, Robert W. Woodruff Arts Center, Inc
(SEAL).

Secretary, _____ by: _____
Concert / Southern Chastain Promotions (SEAL)
Concert / Southern Chastain Promotions Title: _____

Secretary, _____ by: _____ (SEAL)
Southern Promotions, Inc. For Southern Promotions, Inc.
Title: _____

Secretary, _____ by: _____ (SEAL)
High Cotton, Inc. For High Cotton, Inc.
Title: _____

APPROVED:

RECOMMENDED:

Commissioner, Department
of Parks, Recreation and Cultural Affairs
City of Atlanta

Chief Operating Officer, City of Atlanta

(Signatures continued on next page)
APPROVED AS TO FORM: APPROVED:

Assistant City Attorney

APPROVED AS TO INTENT:

Director, Bureau of Purchasing
And Real Estate

APPROVED AS TO INTENT:

Director, Bureau of Cultural Affairs

Chief Financial Officer, City of Atlanta

00-C-1785

(Do Not Write Above This Line)

AN ORDINANCE

BY FINANCE/EXECUTIVE COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR CHASTAIN PARK AMPHITHEATER MANAGEMENT BETWEEN ROBERT W. WOODRUFF ARTS CENTER, INC. ON BEHALF OF THE ATLANTA SYMPHONY ORCHESTRA AND THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

01/02/01
Filed Without Objection

- ☒ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☐ PERSONAL PAPER REFER

Date Referred 11/6/00

Referred To: Finance / Executive

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

☒ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

CERTIFIED
 JAN 2 2001

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
 JAN 30 2001

MAYOR'S ACTION